

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Submitted on Briefs November 16, 2009

REGINOL L. WATERS

v.

**GAIL RAY, Commissioner of the Tennessee Department of Correction, and
GLEN TURNER, Warden HCCF**

**Appeal from the Chancery Court for Davidson County
No. 05-2083-III Ellen H. Lyle, Chancellor**

No. M2008-02086-COA-R3-CV - Filed December 29, 2009

This appeal concerns the reimbursement of criminal court costs. After a jury trial in June 2001, the petitioner/inmate was found guilty of various crimes. The judgments of conviction were entered in August 2001. The court costs from the criminal trial were billed in part to the state. In 2004, the State informed the petitioner that, in accordance with T.C.A. § 40-25-143, the department of correction would begin deducting amounts from his inmate trust fund account to reimburse the State for court costs associated with his criminal trial. T.C.A. § 40-25-143 became effective on July 1, 2001. The petitioner filed a petition for declaratory relief, arguing that T.C.A. § 40-25-143 was unconstitutionally applied retroactively to him, because the State was required to pay his court costs under T.C.A. § 40-25-129, which was in effect when his jury verdict was returned. The trial court granted summary judgment in favor of the respondents. The petitioner then filed a motion to alter or amend, which was ultimately denied. The petitioner now appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and J. STEVEN STAFFORD, J., joined.

Appellant/Petitioner Reginol L Waters, Whiteville, Tennessee, pro se

Robert E. Cooper, Jr., Attorney General and Reporter, Michael Moore, Solicitor General, and Pamela S. Lorch, Nashville, Tennessee, for Appellee/Respondent Gail Ray, Commissioner of the Tennessee Department of Correction

James I. Pentecost and Jon A. York, Jackson, Tennessee, for Appellee/Respondent Glen Turner, Warden HCCF

OPINION

FACTS AND PROCEEDINGS BELOW

This is the third appeal in this case. The underlying facts were set forth in the second appeal, *Waters v. Ray*, No. M2006-01453-COA-R3-CV, 2008 WL 2557360 (Tenn. Ct. App. June 25, 2008), as follows:

Petitioner/Appellant, Reginol Waters (Mr. Waters) is serving a total sentence of fifty-eight years in the custody of the Tennessee Department of Correction (“TDOC”) after having been convicted in 2001 of rape, aggravated rape, aggravated robbery, and aggravated burglary. In *State v. Waters*, No.2000-C-1267, Mr. Waters was found guilty by a jury on June 21, 2001. A sentencing hearing apparently was held on July 27, 2001, and the Circuit Court for Davidson County entered final judgment on the conviction on August 3, 2001. The judgment became final thirty days after entry by the trial court if no post-trial motion was filed by Mr. Waters, or, if Mr. Waters filed any post-trial motion, upon entry of an order disposing of the motion. *See State v. Mixon*, 983 S.W.2d 661, 670 (Tenn.1999). Mr. Waters is housed at the Hardeman County Correctional Facility (“HCCF”) under the supervision of Warden Glen Turner.

On August 15, 2001, a *fieri facias* was issued against Mr. Waters. On February 28, 2002, a bill of costs was issued in *State v. Waters*, which included costs billed to the State in the amount of \$669. On May 15, 2002, a *nulla bona* was returned on the *fieri facias*. On March 3, 2004, the Central Trust Fund Administration (“CTFA”) advised Mr. Waters in writing that, pursuant to Tennessee Code Annotated § 40-25-143, the Department of [Correction] was permitted to collect costs paid by the State from the inmate’s trust account while the inmate was in the custody of the TDOC. CTFA advised Mr. Waters that, in accordance with the statute, it would automatically deduct fifty percent of all deposits made to Mr. Waters’ trust account until the \$669 billed to the State was paid in full.

In August 2005, Mr. Waters filed a petition for declaratory judgment against Gail Ray, Commissioner, Tennessee Department of Correction (“the Commissioner”) and Glen Turner (Mr. Turner), Warden, HCCF in the Chancery Court for Davidson County.¹ In his petition, Mr. Waters sought a declaration that section 40-25-123 had

¹ In *Waters v. Ray*, No. M2006-01453-COA-R3-CV, Mr. Waters attempted to serve David D. Torrence, Clerk of Davidson County Criminal Court (“Criminal Court Clerk”), Kim Chandler, Deputy Clerk of Accounting for Davidson County Criminal Court (“Deputy Clerk”), W.G. Lutche, Legal Administrator for the Tennessee Department of Correction (“Legal Administrator”), and Kay Milburn, an employee of the CTFA (“CTFA Administrator”). The Criminal Court Clerk and the Deputy Clerk obtained an order in the trial court quashing service of process as to them. The CTFA Administrator and the Legal Administrator later answered the petition along with the Respondent Commissioner of the

(continued...)

been unconstitutionally retroactively applied to him where the statute became effective July 1, 2001, and he had been convicted on June 21, 2001. He also sought a declaration that he has a vested right in a finding of indigency made by the trial court in January 2001.

On December 12, 2005, Mr. Turner filed a motion to dismiss for failure to state a claim. In his motion, Mr. Turner asserted that Mr. Waters had alleged no action or inaction on Mr. Turner's part upon which relief could be granted. Mr. Turner further asserted that the relief sought by Mr. Waters was not within Mr. Turner's discretion or control. The trial court granted Mr. Turner's motion to dismiss on May 25, 2006.

In March 2006, the Commissioner filed a motion for summary judgment, statement of undisputed facts, and memorandum of law in support of the motion for summary judgment. In the motion, the Commissioner asserted that a criminal defendant has no "vested right" in indigency. The Commissioner further asserted that Tennessee Code Annotated § 40-25-143 was applied to Mr. Waters' inmate trust account prospectively where it was applied to funds deposited after July 1, 2001, the date the statute became effective. The Commissioner also asserted that the judgment against Mr. Waters was entered on August 3, 2001, subsequent to the date Tennessee Code Annotated § 40-25-143 became effective, and accordingly was not retroactively applied to Mr. Waters. The trial court determined that section 40-25-143 had not been applied retroactively and awarded summary judgment to the Commissioner on May 25, 2006.

On June 26, 2006, Mr. Waters filed a motion to reconsider, alter or amend and vacate/set aside the judgment. Mr. Waters stated his motion was made pursuant to Tennessee Rules of Civil Procedure 59 and 60.02. On June 29, 2006, Mr. Waters filed a notice of appeal to this Court and a motion for leave to proceed as a poor person on appeal. The Commissioner opposed Mr. Waters' Rules 59 and 60 motion on the ground that the trial court lost jurisdiction to adjudicate the motion upon the filing of Mr. Waters' notice of appeal. On July 17, 2006, the trial court granted Mr. Waters' petition to proceed as a poor person on appeal. The trial court determined, however, that it was without jurisdiction to hear the motion to alter or amend where Mr. Waters had filed a notice of appeal to this Court.

On August 21, Mr. Waters moved the court to set aside its order dismissing his motion to alter or amend for lack of jurisdiction. Mr. Waters argued that the trial

¹(...continued)

Department of Correction and joined in the Commissioner's motion for summary judgment. There is no indication in the record that the Criminal Court Clerk or the Deputy Clerk participated in the case after the order granting the motion to quash service of process.

court's order was not final when he filed his notice of appeal to this Court where his motion to alter or amend was pending in the trial court. Mr. Waters further asserted that his notice of appeal was, therefore, prematurely filed. He asserted that, under Rule 4 of the Tennessee Rules of Appellate Procedure, the trial court retained jurisdiction over his motion to alter and amend despite the premature filing of his notice of appeal. On August 24, 2006, Mr. Waters filed a motion in this Court for leave to remand to the chancery court. By order dated August 30, 2006, this Court determined that the chancery court had erred in determining that it had lost jurisdiction to hear Mr. Waters' motion to alter or amend upon Mr. Waters' filing of a premature notice of appeal to this Court. We vacated the chancery court's order and remanded the matter to the chancery court for consideration of Mr. Waters' Rule 59 motion.

On September 19, 2006, the trial court denied Mr. Waters' August 21 motion to set aside the court's order dismissing his motion to alter or amend for lack of jurisdiction. The trial court's order stated, in whole:

The Court denies the Petitioner's Motion to Alter or Amend, Vacate, Set Aside Order for Lack of Jurisdiction. The motion was filed August 21, 2006. Two months prior, on June 29, 2006, the Petitioner filed a notice of appeal. Jurisdiction of this case is now with the Court of Appeals. This Court denies the Petitioner's motion for lack of jurisdiction of the trial court.

It is so ORDERED.

Thus, despite this Court's order of remand instructing the trial court that it retained jurisdiction to adjudicate Mr. Waters' Rule 59 motion despite the premature filing of Mr. Waters' notice of appeal, the trial court apparently never adjudicated the Rule 59 motion. It merely denied Mr. Waters' motion to set aside its July 17 order dismissing for lack of jurisdiction.

Waters v. Ray, M2006-01453-COA-R3-CV, 2008 WL 2557360, at *1-3 (Tenn. Ct. App. June 25, 2008). This Court then held that the trial court had erred in dismissing Mr. Waters' initial Rule 59 motion for lack of subject matter jurisdiction. *Id.* at *4. The trial court's order was vacated, and the case was remanded for adjudication of the Rule 59 motion. *Id.* at *5.

On remand, the trial court denied Mr. Waters' initial Rule 59 motion on the merits. Mr. Waters now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Mr. Waters raises the following issues:

(1) Whether the manner in which the trial court interpreted and applied Tennessee Code Annotated § 40-25-143 interfered with or impaired Mr. Waters' rights or privileges under Tennessee Code Annotated § 40-25-129;

(2) Whether the trial court erred in failing to consider that, under the doctrine of equitable estoppel, the Tennessee Department of Correction was not authorized to collect money from Mr. Waters' trust fund account to reimburse the state for payment of the bill of cost; and

(3) Whether Mr. Turner, the Criminal Court Clerk, and the Deputy Clerk meet the definition of "agency" as set out in Tennessee Code Annotated § 4-5-102(2); if so, whether the trial court erred in granting their respective motions to dismiss and to quash service of process.

We review the trial court's grant of summary judgment *de novo* with no presumption of correctness. **Warren v. Estate of Kirk**, 954 S.W.2d 722, 723 (Tenn. 1997) (citing **Carvell v. Bottoms**, 900 S.W.2d 23, 26 (Tenn. 1995)). Upon review we "must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied." **Mathews Partners, LLC v. Lemme**, No. M2008-01036-COA-R3-CV, 2009 WL 3172134, at *3 (Tenn. Ct. App. Oct. 2, 2009) (citing **Hunter v. Brown**, 955 S.W.2d 49, 50-51 (Tenn. 1977)). Summary judgment is properly granted when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04.

ANALYSIS

In this case, TDOC collected funds from Mr. Waters' inmate trust account pursuant to Tennessee Code Annotated § 40-25-143, which provides as follows:

(a) The department of correction shall have the authority to collect from the inmate trust fund account of any defendant in its custody those moneys necessary to satisfy any unpaid costs that have been imposed upon the defendant.

(b) When the state has paid the costs in a case accruing under § 40-25-130(5), and the defendant is in the custody of the department of correction, the department shall have the authority to collect from the inmate trust fund account of the defendant those moneys necessary to reimburse the state for the payment of the costs. Any amount so collected shall be deposited in the state general fund.

T.C.A. § 40-25-143 (2006). Mr. Waters argues on appeal that the statute was unconstitutionally applied retroactively to him. He asserts that, under Tennessee Code Annotated § 40-25-129(1), he acquired a vested interest in having the State pay the court costs billed in his criminal trial, **State v. Waters**, No. 2000-C-1267, when the jury returned the guilty verdict in June 2001. Because Tennessee Code Annotated § 40-25-143 did not become effective until July 1, 2001, Mr. Waters

contends that it was unconstitutionally applied retroactively to reimburse the State for the costs of his June 2001 trial. In the alternative, Mr. Waters contends that TDOC was estopped to collect funds from his trust fund account because he had a vested interest in having the State pay his court costs.

Tennessee Code Annotated § 40-25-123 states the general rule that “[a] defendant convicted of a criminal offense shall pay all the costs that have accrued in the cause.” T.C.A. § 40-25-123(a) (2006); *State v. Black*, 897 S.W.2d 680, 682 (Tenn. 1995). Mr. Waters’ arguments are premised on Tennessee Code Annotated § 40-25-129, which contains exceptions from the general rule. *Black*, 987 S.W.2d at 682. Section 40-25-129 provides as follows:

Neither the state nor any county of the state shall pay or be liable in any criminal prosecution for any costs or fees hereafter accruing, except in the following classes of cases:

- (1) All felony cases, where prosecution has proceeded to a verdict in the circuit or criminal court;
- (2) All cases where the defendant has been convicted in a court of record and the court has made a finding at any evidentiary hearing that the defendant is indigent and remains indigent at the time of conviction or where the execution issued upon the judgment against the defendant has been returned nulla bona. . . .; and
- (3)(A) When a criminal prosecution is instituted against a state prison inmate because of conduct within a department of correction penal institution or because of conduct relative to an escape attempt from a penal institution, the expense of the prosecution imposed on the county wherein the institution is located shall be reimbursed to the county by the state. . . .

T.C.A. § 40-25-129 (2006).

In *State v. Black*, 897 S.W.2d 680 (Tenn. 1995), the Tennessee Supreme Court addressed one of the exceptions contained in Section 40-25-129 to the general rule. The issue in *Black* was whether a trial court was required under Tennessee Code Annotated § 40-25-129 to waive court costs upon a finding of indigency. *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995). The Court looked to the legislative history of § 40-25-129(2): “It is the legislative intent of the General Assembly that such finding of indigency, . . ., *shall not bar the subsequent recovery from, or on account of, the defendant of any costs, fees, taxes, or other charges authorized, imposed or prescribed by law.*” *Id.* (quoting Tenn. Pub. Acts. 1980, ch. 625) (emphasis added by *Black*). It found that “[b]ecause a rule requiring the trial court to waive court costs . . . would categorically prohibit the State from subsequently recovering those costs,” the decision of whether to waive court costs was within the trial court’s discretion. *Id.* Thus, the Court in *Black* made it clear that the statutory exceptions in section 40-25-129 are permissive, and not mandatory derogations from the general rule. *Id.*

Thus, section 40-25-129 states that a criminal court *may* bill costs to the State when a felony prosecution has proceeded to a verdict; it does not require the criminal court to do so. Moreover, even if costs are billed to the State, subsequent recovery from the convicted defendant is not

precluded. *Id.*; *see* T.C.A. § 40-25-123(a) (2006). As such, the trial court did not err in dismissing Mr. Waters' petition. This holding pretermits all other issues raised on appeal.

CONCLUSION

The decision of the trial court is affirmed. The costs of this appeal are taxed to the Appellant Reginol L. Waters, and his surety, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE